IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10260 OF 2004

Shridhar Ragunath Mhatre ..Petitioner.

Vs.

Phukhraj B. Jain (since deceased)
through his Legal Heir
Jaideep Pukhraj Jain ..Respondent.

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Ms.Smite Mhatre for the Petitioner.

Mr.P.J.Pawar for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

27th April, 2005.

P.C. :

The Learned Civil Judge, Senior Division, Alibaug was, in my view, correct in rejecting the application for recission of the contract dated 30th January, 1987 which had been preferred under Section 28 of the Specific Relief Act, 1963. The impugned judgment of the Learned Trial Judge would show that a compromise purshis, Exh.14 was filed by the parties before the Trial Court, There was a

recital in the compromise deed that a sale deed will be executed after permission was obtained under Section 43 of the Bombay Tenancy and Agricultural Lands Act. The balance consideration was agreed to be paid at the time of the execution of the sale deed. In these circumstances, having regard to the agreement between the parties, the Learned Trial Judge was justified in holding that under the terms of the compromise, permission under Section 43 of the Tenancy Act is a condition precedent; the permission being required to be obtained by the Petitioner herein. Having regard to the terms of the deed of compromise, there was clearly no merit in the application for recission. There is no merit in the Petition which is accordingly rejected.